

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendment

By the foregoing amendments independent claims 12, 24, 36 and 41 are amended and claims 48-50 are added, whereby claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-50 will be pending, with claims 12, 36, 41 and 44 being independent claims.

Support for the present amendments can be found throughout the present specification and in particular, at page 2 thereof.

Applicants emphasize that the amendments to claims 12, 24, 36 and 41 are without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute these claims in their original, unamended form in one or more continuation and/or divisional applications.

Summary of Final Office Action and Advisory Action mailed 1/17/2008

As an initial matter, Applicants note with appreciation that the Amendment filed January 2, 2008 has been entered and that the objection to the specification has been withdrawn in view thereof.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 12-17, 19, 20, 32, 33, 35 and 45 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over McGee et al., U.S. Patent No. 5,585,343 (hereafter "McGEE").

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Henkel KGaA, DE 4,318,171 (hereafter "HENKEL I") as evidenced by Derwent Abstract, AN 1995-014884.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL I in view of Derwent Abstract, AN 1995-014884, Rosano, U.S. Patent No. 4,146,499 (hereafter "ROSANO"), Hoppe et al., U.S. Patent No. 4,839,165 (hereafter "HOPPE"), Unilever PLC, EP 560 516 (hereafter "UNILEVER") and/or The Procter & Gamble Company, EP 616 027 (hereafter "P & G").

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 stand rejected under 35 U.S.C. § 102(a) (?) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Henkel KGaA, DE 4,337,041 (hereafter "HENKEL II") as evidenced by Derwent Abstract, AN 1995-171245.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL II in view of Derwent Abstract, AN 1995-171245, ROSANO, HOPPE, UNILEVER and/or P & G.

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In the Advisory Action the Examiner again takes the position that the claims are allegedly internally inconsistent by virtue of the use of intermediate transitional language followed by open transitional language defining the oil phase.

Applicants respectfully traverse this rejection again. In this regard, Applicants submit again that one of ordinary skill in the art will readily understand that the term “comprises” with respect to the oil phase merely indicates that one or more substances which differ from the recited substances may additionally be present in the oil phase as long as in this case the oil phase still consists essentially of constituents of low volatility. There is no inconsistency at all in this regard. It is noted that the Examiner has not provided any reasons whatsoever as to why it allegedly is impossible for an oil phase to both (i) consist essentially of constituents of low volatility and (ii) comprise one or more of an ester of an alkanecarboxylic acid with a chain length of from 3 to 30 carbon atoms and an alcohol with a chain length of from 3 to 30 carbon atoms, an ester of an aromatic carboxylic acid and an alcohol with a chain length of from 3 to 30 carbon atoms, a hydrocarbon wax, a dialkyl ether, cyclomethicone, and hexamethylcyclotrisiloxane.

In view of the foregoing, Applicants again respectfully request that the rejection of claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 under 35 U.S.C. § 112, second paragraph be withdrawn.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over McGEE

Claims 12-17, 19, 20, 32, 33, 35 and 45 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over McGEE. The final Office Action mailed November 2, 2007 asserts that McGEE discloses laureth sulfate as polyethoxylated emulsifier and hydrocarbons as perfume oils. The Office Action further asserts that McGEE discloses the use of both ethylene glycol monophenyl ether and fatty alcohols in the exemplified compositions and alleges that said materials “would have been expected to have W/O emulsifier properties”. The Office concedes that “McGee et al differs from the claims in the oil component as claimed” and then asserts that “[t]o the extent McGee et al. lacks a disclosure of the claimed compositions in sufficient specificity as claimed, McGee et al clearly contemplated the sodium laureth sulfates, hydrocarbons and fatty alcohols.” Paragraph bridging pages 4 and 5 of the present Office Action.

This rejection is respectfully traversed again. In particular, the Examiner recognizes that the compositions of McGEE differ from the claimed cosmetic preparation, *inter alia*, in that the component(s) of the oil phase are different. In this regard, the rejection fails to give any reason as to why it would allegedly have been obvious to one of ordinary skill in the art to use one or more of the components of the oil phase recited in, for example, present claim 12 in the perfume formulations of McGEE.

Applicants note that in the Advisory Action the Examiner again mentions that McGEE “discloses the use of both ethylene glycol monophenyl ether and fatty alcohols in the exemplified compositions”. Applicants are still unable to see the relevance of this fact for the patentability of the rejected claims. Neither ethylene glycol monophenyl ether nor fatty alcohols qualify as any of the substances which are recited in claim 12 in connection with the oil phase, i.e., as an ester of an

alkanecarboxylic acid with a chain length of from 3 to 30 carbon atoms and an alcohol with a chain length of from 3 to 30 carbon atoms, an ester of an aromatic carboxylic acid and an alcohol with a chain length of from 3 to 30 carbon atoms, a hydrocarbon wax, a dialkyl ether, cyclomethicone, and hexamethylcyclotrisiloxane.

Applicants further note that the fact that MCGEE mentions emollients and silicones as optional components of the compositions disclosed therein does not change the fact that the compositions of MCGEE are perfume formulations, i.e., compositions which are apparently quite different from a cosmetic skin or hair cleansing preparation, a cosmetic skin or hair care preparation or a deodorant preparation as recited in, e.g., present independent claim 12.

Applicants also point out that the Examiner still has not addressed the further issues with respect to claims 14 and 17 which Applicants have raised, i.e., why one of ordinary skill in the art would want to incorporate, for example, an astringent or a deterusive surfactant in the perfume formulations of MCGEE.

In view of the foregoing, Applicants again submit that the rejection of claims 12-17, 19, 20, 32, 33, 35 and 45 under 35 U.S.C. § 103(a) over McGEE is unwarranted and should be withdrawn, which action is respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 102(b)/103(a) over HENKEL I

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL I as evidenced by Derwent Abstract, AN 1995-014884. In this regard, the Office Action of November 2, 2007 and the Advisory Action rely especially on the abstract, the

Examples, Table 1 and the PIT emulsions disclosed in HENKEL I.

Applicants again respectfully traverse this rejection. It is noted that in response to the comments at page 5 of the Advisory Action Applicants have amended the rejected independent claims by additionally reciting therein that the translucent or transparent oil-in-water microemulsions have a particle diameter in the range from about 10^{-2} μm to about 10^{-1} μm . This clearly distinguishes the microemulsions recited in the instant claims from the PIT emulsions of HENKEL I whose droplet diameter is of an order of magnitude of 100-300 nanometers (nm) (see page 4, second paragraph of the English language translation of HENKEL I provided by the Examiner).

Applicants further point out that even if one were to assume, *arguendo*, that the PIT emulsions of HENKEL I qualify as microemulsions in the sense of the instant claims, the cosmetic compositions (aqueous preparations) of HENKEL I would not be (based on) microemulsions. In particular, HENKEL I makes it absolutely clear that the PIT emulsions described therein account for only a small percentage of these cosmetic compositions and merely serve the purpose of providing finely emulsified fatty substances for an aqueous preparation of ionic surfactants which are claimed in HENKEL I. In this regard, claim 1 of HENKEL I may, for example be referred to.

Also, according to the last paragraph of page 4 of the English language translation of HENKEL I provided by the Examiner, “[i]t was found that the addition of such PIT emulsions to aqueous preparations of ionic surfactants causes a quite considerable improvement of the effect of such preparations upon keratinic surfaces; ...”. Moreover, the exemplary aqueous preparations of ionic surfactants of HENKEL I contain only a small percentage, i.e., 5 % to 10 % by weight, of a PIT emulsion (see pages 21 and 22 of the English language translation of HENKEL I), i.e., these

preparations can clearly not be considered to be (based on) the PIT emulsions described by HENKEL I.

Applicants submit that for at least all of the foregoing reasons and the additional reasons set forth in the responses to the previous Office Actions, HENKEL I neither anticipates nor renders obvious the subject matter of any of the present claims. In view thereof, withdrawal of the rejection of claims 12, 16, 17, 20, 23, 24, 26, 20-33 and 35 under 35 U.S.C. § 102(b)/103(a) over HENKEL I is warranted and respectfully requested.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over HENKEL I in View of
DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G***

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL I in view of Derwent Abstract, AN 1995-014884, ROSANO, HOPPE, UNILEVER and/or P & G. The Office Action of November 2, 2007 concedes that HENKEL I (and Schambil ?) differs from the rejected claims in the incorporation of allegedly conventional cosmetic ingredients but essentially alleges that ROSANO cures this deficiency of HENKEL. The rejection further asserts that to the extent the claims differ in particular emulsifiers employed, HOPPE, UNILEVER and P & G allegedly “disclose the use of alkyl ether sulfates or non-ionic ethoxylates in combination or alternatively with alkyl ether carboxylates in cleaning and/or hair care compositions. In this regard, the rejection also alleges that “[t]hese references are combinable because they teach cleaning compositions and particularly hair care compositions and the surface active agents suitable therefor[e]”.

Applicants respectfully traverse this rejection for all of the reasons which are set forth in the Amendment filed January 2, 2008, which reasons are incorporated herein in their entirety to avoid

too much repetition.

Applicants note that in response to Applicants' counterarguments set forth in the Amendment filed January 2, 2008 the Examiner essentially takes the position that the cosmetic ingredients recited in the rejected claims were allegedly known for cosmetic purposes from ROSANO, HOPPE, UNILEVER and/or P & G, wherefore one of ordinary skill in the art would allegedly have been motivated to include them in the aqueous preparation of ionic surfactants of HENKEL I.

In this regard, Applicants point out that "[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1741.

Applicants note that the Examiner has failed to identify any reasons which would have prompted one of ordinary skill in the art to pick certain specific cosmetic ingredients and emulsifiers from the disclosures of one or more of ROSANO, HOPPE, UNILEVER and/or P & G for incorporation into the aqueous preparation of ionic surfactants of HENKEL I.

Applicants submit that for at least all of the foregoing reasons and the additional reasons set forth in the Amendment filed January 2, 2008, the rejections of claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 under 35 U.S.C. § 103(a) over HENKEL I in view of DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G are without merit, wherefore withdrawal thereof is warranted as well and respectfully requested again.

Response to Rejection of Claims under 35 U.S.C. § 102(a)/103(a) over HENKEL II

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 stand rejected under 35 U.S.C. § 102(a) (?) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL II as evidenced by Derwent Abstract, AN 1995-171245. The Office Action of November 2, 2007 does not give any specific reasons for this rejection and merely indicates that the basis for the rejection is essentially as set forth for HENKEL I.

Applicants respectfully traverse this rejection again for all of the reasons which are set forth in the Amendment filed January 2, 2008, which reasons are incorporated herein in their entirety to avoid too much repetition.

Applicants note that in response to Applicants' corresponding counterarguments the Examiner takes the position that "less than 1 micron would include microemulsions and the historical definition of a microemulsion has been the absence of observable droplets under an optical microscope, which are generally observable down to about 250 nm (see top of page 9 of Advisory Action).

Apart from the fact that the Examiner has failed to provide any written (or other) evidence for the asserted "historical definition of a microemulsion", Applicants point out that the rejected independent claims have been supplemented to additionally recite therein that the translucent or transparent oil-in-water microemulsions have a particle diameter in the range from about 10^{-2} μm to about 10^{-1} μm , thereby clearly distinguishing them from the PIT emulsions of HENKEL II.

Applicants submit that for at least all of the foregoing reasons and the additional reasons set forth in the Amendment filed January 2, 2008, HENKEL II neither anticipates nor renders obvious the subject matter of any of the present claims. In view thereof, withdrawal of the rejection of claims

12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 under 35 U.S.C. § 102(a)/103(a) over HENKEL II is warranted and again respectfully requested.

**Response to Rejection of Claims under 35 U.S.C. § 103(a) over HENKEL II in View of
DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G**

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL II in view of Derwent Abstract, AN 1995-171245, ROSANO, HOPPE, UNILEVER and/or P & G. In this regard, the Office Action of November 2, 2007 and the Advisory Action merely refer to the comments with respect to the rejection of the same claims under 35 U.S.C. § 103(a) over HENKEL I in view of DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G.

Withdrawal of this rejection is requested for at least all of the reasons which are set forth above with respect to the rejection under 35 U.S.C. § 103(a) over HENKEL I in view of DERWENT, ROSANO, HOPPE, UNILEVER and/or P & G, which reasons apply to the present rejection as well.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted
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A handwritten signature in black ink, appearing to read 'Neil F. Greenblum', written over a horizontal line.

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